

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 6/15/05 Item 4.b.

File Number
CP 05-006

Application Type
Conditional Use Permit

Council District 9

Planning Area Cambrian

Assessor's Parcel Number(s)
419-39-026

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Sanhita Mallick

Location: West side of Harwood Road, approximately 200 feet northerly of Michon Drive (4949 Harwood Rd)

Gross Acreage: 6.3 acres

Net Acreage: 6.3 acres

Net Density: n/a

Existing Zoning: R-1-8 Single-Family Residence

Existing Use: Vacant Public School, Church

Proposed Zoning: No Change

Proposed Use: Private School, Church

GENERAL PLAN

Completed by: SM

Land Use/Transportation Diagram Designation
Public/Quasi-Public

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: SM

North: Single-Family Detached Residential

R-1-8 Single-Family Residence

East: Single-Family Detached Residential

R-1-8 Single-Family Residence

South: Single-Family Detached Residential

R-1-8 Single-Family Residence

West: Single-Family Detached Residential

R-1-8 Single-Family Residence

ENVIRONMENTAL STATUS

Completed by: SM

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: SM

Annexation Title: Lone Hill No. 1

Date: June 9, 1955

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval
☐ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date: _____

Approved by: _____
☒ Action
☐ Recommendation

PROPERTY OWNER/APPLICANT/CONTACT PERSON

Nan Wojcik
Chief Financial Officer
Union School District
5175 Union Avenue
San Jose, CA 95124-5434

PUBLIC AGENCY COMMENTS RECEIVEDCompleted by: Sanhita Mallick

Department of Public Works

See attached memorandum

Other Departments and Agencies

See attached memorandum from the Fire Department, memorandum from the Police Department

GENERAL CORRESPONDENCE

See attached letter from Union School District and Challenger School.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The property owner, Union School District, is requesting a Conditional Use Permit to allow a private school (Challenger School) on a former public school site. Private schools require a Conditional Use Permit in all residential Zoning Districts. Private schools have the potential to impact a neighborhood as a result of a greater percentage of students arriving by car, compared with a neighborhood school which serves students within a closer proximity. This Conditional Use Permit also functions as a Site Development Permit for minor building and site improvements.

The school district operated a public school (Lone Hill Elementary School) on the subject site until 2004, when the public school was closed. Challenger School is a private pre-school and elementary school that is opening a new branch at this location.

Surrounding land uses include detached single-family residential uses on all four sides - to the north across Coralee Drive, to the east across Harwood Road, to the west across Lone Creek and to the south adjacent to the property line.

Challenger School is operated by a for-profit organization that originated at San Jose in 1963 and is currently based in Utah. Currently the organization manages 20 schools in the states of California, Utah and Nevada, thirteen of which are in the San Jose-San Francisco Bay area. All expenses of the school are covered by the tuition fee collected from the students. A fee schedule and admission policy packet for the 2005-2006 academic year is attached with the staff report.

Project Description

Challenger School is proposing to utilize all of the existing buildings and associated facilities at the subject site. The facility has the capacity to enroll approximately 788 students. Challenger School is proposing to enroll a maximum of 675 students at this campus.

Challenger School will offer pre-school through eighth grade at this campus. The maximum number of students is set at 675. Of these, the pre-school will have a capacity of 120 students and each grade from kindergarten to 8th grade will have approximately 61 students. The regular school year will be in session from August/ September through mid-June of each year. The regular school day will be from 8:30 am to 3:30 pm, with extended care being offered before and after school from 7:00 am to 6:00 pm. There are no regularly-scheduled activities during the evenings or the

weekends. Similarly to public elementary schools, approximately eight times a year, parents are invited to the school campus for typical events such as orientation nights and open houses, workshops and cultural performances, which will not extend beyond 9.00 PM at night. In addition, Challenger School will offer a 6-8 week summer school between June and August at this campus. Typical student enrollment in these programs are generally between 33 % to 50 % of the regular enrollment.

Minor exterior improvements proposed as part of the project include new street trees and on-site landscaping, parking lot re-striping and installation of new fencing and gates. Other improvements associated with converting this facility from a public to private school consist of painting, flooring and other small repairs.

ENVIRONMENTAL REVIEW

The Environmental Quality Act, Section 15301 Existing Facilities - Class 1, specifies that projects may be found *exempt* which consist of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

Staff has concluded that the project involves the use and minor alteration of an existing facility involving negligible or no expansion of use beyond that for which the facility was constructed. Based on this analysis, the Director of Planning has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act.

GENERAL PLAN CONFORMANCE

The proposed private school use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Public/Quasi-Public. This designation allows public land uses such as schools.

PUBLIC OUTREACH

A community meeting was arranged by Challenger School at the project site on April 19, 2005. Approximately twenty-five members of the public attended the meeting. Issues discussed at the community meeting were hours of operation, routing of vehicles and use of the facility by the community members.

A notice of the Planning Commission public hearing was mailed to all owners and tenants of property within a 500-foot radius of the project site. No comments have been submitted by the neighborhood. Staff has been available to discuss the project with members of the public.

ANALYSIS

The key issues analyzed for the proposed project are traffic congestion and operational safety, land use compatibility, parking, and security.

Traffic Congestion and Safety

Students of Challenger School are typically driven to school in private vehicles. The trip generation rate calculated at another Challenger School site is 1.1 per student, as opposed to the usual standard of 0.4 per student for public schools and 0.9 per student for private school as mentioned in the guidelines of the Institute of Transportation Engineers.

A Traffic Impact Analysis prepared by the applicant's consultant has been reviewed by the Department of Public Works. Under the City of San Jose and Santa Clara County Congestion Management Program (CMP) traffic impact analysis guidelines, the proposed project would not result in any significant transportation impact at the intersections surrounding the project site.

Challenger School has also submitted a draft "*Comprehensive Traffic Management Plan*" to the Director of Planning. According to the Plan, as part of standard operating procedure, the school will implement certain rules to manage the traffic generated by the school. Parents are instructed in these traffic management rules and policies, and the school oversees the implementation. Traffic management measures include: deploying school employees to help in traffic management, suggesting traffic routes for parents to follow, and providing on-site stacking and staggered starting/closing hours for different classes. Staff is continuing to work with the school on finalizing the traffic management plan. Staff has conditioned the permit so that the operation of the school will adhere to the revised traffic management plan.

On-site stacking of cars: As parents wait in their cars to drop off or pick up children, vehicles may stack up onto neighborhood streets. In order to minimize this off-site stacking, the school proposes to provide on-site stacking space for the vehicles. There are two existing driveway cuts on Harwood Road and two separate segments of the parking lot in front of the school. Challenger School is proposing to use one parking lot segment and a proposed driveway extension within the subject site near the school field as drop-off/pick-up area for school children. According to the proposed site plan, the school is proposing to provide stacking space for at least 60 vehicles that will enter and exit through the two driveways on Harwood Road. The attached site plan shows the amount and location of stacking of cars provided on site.

The school requires that parents remain in their vehicles while in the stacking-loading area. On arrival at the school, children will be escorted from the cars by designated employees to their respective classrooms, and will be dropped off at the vehicle door when being picked up to leave by a designated employee. The proposed amount of on-site stacking in combination with the Traffic Management Plan will reduce minimize the potential for cars to stack on the public street.

Start and departure times: In order to further address concerns regarding traffic from child drop-off and pick-up from school, Challenger School has proposed to stagger start and departure times of different grades of the school. Drop-off times would be spread throughout the morning from approximately 7:00 am until 8:30 am, and the after-school program would allow for pick-up from 3:30 p.m. to 6:00 p.m. The detailed chart that shows the exact drop-off/pick up time is included in the attachment. Staff has proposed conditions in the permit so that the school's drop-off and pick-up times are spread out as mentioned above. Parents are assigned a specific 10-15 minute interval within their child's designated start or departure time to drop off of pick up their children.

Staff has concluded that staggering start times will spread the volume of traffic over a several-hour period each day, minimizing the potential for an excessive volume of traffic and overflowing of on-site stacking onto the public street.

For all of these reasons, together with the conditions in the draft permit, staff has concluded that the proposed project will result in an orderly traffic flow and a safe drop-off operation.

Land Use Compatibility

The site is surrounded by single-family homes on the north, east and south side of the property. Among those, the homes on the east, west and the north are separated by existing public streets. The main impact of the project on these homes will be due to the traffic generated by the operation of the school. Traffic impact of the school has already been discussed in the following “traffic congestion and operational safety” section.

The residences on the south side of the property have their rear yards abutting the school property. The school play yard occupies this side of the property, providing a buffer between the school site and the existing residential neighborhood. The proposed project will not intensify the use of the play yard since Challenger School will only have a maximum number of 675 students, whereas Lone Hill Elementary School had the capacity of 788 students.

The school site and associated grounds will continue to be open to the public, with controlled access during hours that the private school is open. Challenger School is only proposing to utilize the existing buildings and is not proposing to construct any new buildings on the site.

From the above analysis, staff has concluded that the proposed private school operations and activities as described, would be very similar to those of the public school and would not result in new land use compatibility concerns.

Parking

There is sufficient parking to serve the proposed use. The parking space requirement for day care centers according to the Zoning Code is one parking space per six children, up to 5 spaces, and thereafter one space per 10 children, and for elementary schools (K-8) a minimum of one space per teacher plus one space per employee. Challenger School has indicated that they will have 38 employees at the new site, including 33 teachers. With the maximum enrollment of 120 students at pre-school, a total of 42 parking spaces are required to satisfy the parking requirements of the Zoning Ordinance. A total of 59 on-site parking spaces exist on the site. This would leave a surplus of 17 on-site parking spaces. Some of these parking spaces can be used by parents and visitors during office hours on weekdays.

From the above analysis, Planning staff has concluded that, as proposed, the project conforms to the parking requirements of the Zoning Code.

Security

The security issues faced by school today are more challenging than those in the past, when the existing school facility was originally designed and built. The Police Department raised several

concerns regarding the existing condition of the site (see attached memo). In response to the comments from the Police Department requesting better access control, the school has added new gates, fencing and signage to restrict access and direct visitors to the right entry point on the school site. They have also indicated that they will implement other security measures, such as close-circuit TV security cameras, as budget constraints allow.

From the above analysis, Planning staff has concluded that, as proposed and conditioned, the project will provide an appropriate design for the security of the students.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The project site is located on the west side of Harwood Road, approximately 200 feet northerly of Michon Drive. This Permit would allow a private pre-school and elementary school for up to 675 students in a former public school facility.
2. The site has a designation of Public /Quasi-Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
3. The project site is located in the R-1-8 Single-Family Residence Zoning District.
4. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
5. Surrounding land uses include detached single-family residential uses on all four sides - to the north across Coralee Drive, to the east across Harwood Road, to the west across Lone Creek and to the south adjacent to the property line.
6. The Zoning Ordinance requires a Conditional Use Permit for a private school in the R-1-8 Single-Family Residence Zoning District.
7. The project proposes to allow a private school with a maximum enrollment of 675 students.
8. A total of 59 parking spaces exist on the site.
9. The proposed project includes two on-site child drop-off areas. The project developer has proposed that start and departure times for the students at the new private school will be staggered to minimize potential traffic issues and stacking from overflowing onto the public street.
10. Minor modifications to the exterior of the buildings (including doors and windows) and the site

(including new fencing, gates, and street trees) will occur as part of this project.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth are hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit and Development Exception shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Revised Traffic Management Plan.** Within 30 days of the issuance of the permit, the applicant shall submit a revised Traffic Management Plan, that includes the staggered departure and arrival schedule of the school, to the satisfaction of the Director of Planning.
2. **Payment of Recording Fees.** Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara should be submitted to the Director of Planning within 30 days of approval of this permit, but must be submitted prior to issuance of a Building Permit. Submittal of the recording fee less than one week prior to issuance of a Building Permit will delay the Building Permit issuance for up to one week to allow for recordation of the permit with the County Recorder. This Permit shall be effective at such time when recordation with the County of Santa Clara occurs.
3. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved Site Development plans entitled, "Challenger Elementary School 4949 Harwood Road San Jose California" dated, March 28, 2005, on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
2. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
3. **Traffic Management/Operation Plan.** The facility shall be operated in conformance with the traffic management/operations plan on file with the Department of Planning.
4. **Number of Students/Operation of Facility.** This facility shall be limited to a maximum of 675 students.
5. **Arrival Times.** The arrival times of students shall be in conformance with the following schedule on file with the Department of Planning:
 - 7:00 AM to 7:45 AM for 68 students who arrive early
 - 7:50 AM to 8:30 AM for 292 elementary school students
 - 8:00 AM to 8:30 AM for 112 middle school students
 - 8:45 AM to 9:00 AM for 203 student (108 preschool students and 95 kindergarten students)

6. **Signage.** No new signage is approved as part of this permit. All signs shall conform to the applicable sections of Sign Ordinance of the City of San Jose.
7. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
8. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
9. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
10. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted. Trash areas shall be maintained in a manner to discourage illegal dumping.
11. **Landscaping.** Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
12. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
13. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.
14. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
15. **Fire Flow.** Required fire flow for the site is as approved in writing by the Fire Chief.
16. **Visible Street Numbers.** Street numbers shall be visible day and night from the nearest street, either by means of illumination or by use of reflective materials.
17. **Lock Box.** The project developer shall install a lock box on all gates, to the satisfaction of the City

of San José, Building Official and Fire Chief.

18. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
19. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Interior work that does not result in any audible noise from outside the structure is permitted on Saturday between the hours of 8:00 a.m. and 7:00 p.m.
20. **Outside Storage.** No outside sales or storage is permitted.
21. **Noise.** The sound level generated on this site shall not exceed 55 dba DNL at any property line adjacent to a property used for residential purposes.
22. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-16746) to the satisfaction of the Director of Public Works:
 - a. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - b. **Undergrounding:** The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Harwood Ave prior to issuance of a Public Works clearance. 50 percent of the base fee in place at the time of payment will be due. (Currently, the base fee is \$224 per linear foot of frontage.)
 - c. **Street Improvements:**
 - 1) Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
 - 2) Close unused driveway cut(s).
 - 3) Proposed driveway width to be 26'.
 - 4) Install handicap ramps 3 at opposite returns across Clovis Ave.
 - 5) Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
 - d. **Electrical:**
 - 1) Installation, relocation, and relamping of electrolier(s) may be required along project frontage.
 - 2) Provide clearance for electroliers from overhead utilities and request clearance from utility companies. Clearance from electrolier(s) must provide a minimum of 10' from high voltage lines; 3' from secondary voltage lines; and 1' from communication lines.
 - 3) Provide clearance for electrical equipment from driveways, and relocate driveway or

electrolier. The minimum clearance from driveways is 10' in commercial areas and 5' in residential areas.

e. **Landscape:**

- 1) Install street trees within the public right-of-way along the entire street frontage per City standards.
- 2) The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.
- 3) Contact the City Arborist at (408) 277-2756 for the designated street tree.

23. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This permit file number, CP 05-005, shall be printed on all construction plans submitted to the Building Division.
- b. *Construction Conformance.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms to all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.
- c. *American With Disabilities Act.* The applicant shall provide appropriate access as required by the American With Disabilities Act (ADA).
- d. *Mechanical Equipment.* No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise level from such equipment will not exceed 55 DBA at the residential property line.
- e. *Inlet Filters.* The project developer shall install inlet filters in all new on-site storm drainage inlets. These filters shall be installed, maintained and replaced by a qualified consultant hired by the property owner. Copies of all inspection and maintenance records shall be provided to the City upon request. The project developer shall implement a maintenance program for these inlet filters that includes but is not limited to the following measures:
 - 1) Installation. The inlet filters shall be installed by a qualified individual in conformance with the manufacturer's specifications. Installation records shall be maintained by the project developer and subsequent property owner.
 - 2) Maintenance Record. The property owner must keep a record available for inspection on the project site of all inspections and maintenance of the inlet filters.
 - 3) Regular Sweeping. Paved surfaces subject to runoff shall be swept regularly during dry periods to remove dirt, silt and other loose debris.
 - 4) Regular Inspections. The inlet filters shall be inspected monthly between September and April, and the absorbent material shall be replaced by a qualified individual as necessary to ensure the filters are functioning properly.
 - 5) Replacement of Absorbent Material. The absorbent material shall be replaced by a

qualified individual in conformance with the manufacturer's specifications. Care should be taken to avoid spilling the contaminated material into the drainage system.

- 6) Disposal of Used Absorbent Material. Used absorbent material shall be disposed of in conformance with all applicable local, state and federal regulations.
 - 7) Replenishment of Absorbent Materials Supply. The property owner shall keep a sufficient amount of absorbent material on hand to replace the amount of installed absorbent material plus a reserve to handle emergencies.
24. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

Attachment:

Planset

Location Map

Traffic Management Plan

Brochure and Fee Schedule for Challenger School

Letters from Oak Grove School District and Challenger School

cc:

Clay Stringham, Challenger School, Director of Development